Intent: Indirect & Willful Infringement

Where has the Supreme Court taken us?

June 15, 2017

William J. McCabe
Gene W. Lee
Agenda

- 11:30 to 11:35 am: Introduction of presentation and panelists
- 11:35 to 11:55 am: Discussion of indirect infringement – led by Bill McCabe
- 11:55 am to 12:15 pm: Discussion of willful infringement – led by Gene Lee
- 12:15 to 12:20 pm: Questions and answers
Intent: New Standards For Indirect & Willful Infringement

  - New Indirect Infringement “Knowledge” Standard
  - Federal Circuit’s Application
  - New Willfulness Standard
  - Applications
“Except as otherwise provided in this title, \textit{whoever without authority makes, uses, offers to sell, or sells any patented invention}, within the United States or imports into the United States any patented invention during the term of the patent therefor, \textit{infringes the patent}.”

35 U.S.C. §271(a)
Direct Infringement: “Strict Liability”

No Intent Required

“[A] defendant’s mental state is irrelevant. Direct infringement is a strict-liability offense.”

Indirect Infringement: Statutory Basis

“Whoever *actively induces infringement* of a patent shall be liable as an infringer.”

35 U.S.C. §271(b)

“Whoever offers to sell or sells within the United States … a component of a patented machine, … or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, *knowing the same to be especially made or especially adapted for use in an infringement of such patent*, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.”

35 U.S.C. §271(c)
“In contrast to direct infringement, liability for inducing infringement attaches only if the defendant knew of the patent and that ‘the induced acts constitute patent infringement.’”

*Commil*, 135 S.Ct. at 1926 (citing *Global-Tech*, 131 S.Ct. at 2068).

“Like induced infringement, contributory infringement requires knowledge of the patent in suit and knowledge of patent infringement.”

*Id.* at 1926 (citing *Aro Mfg. Co. v. Convertible Top Replacement Co.*, 377 U. S. 476, 488 (1964)).
Good-faith belief in non-infringement or invalidity can defeat inducement

“Under our case law, it is clear that a good-faith belief of non-infringement is relevant evidence that tends to show that an accused inducer lacked the intent required to be held liable for induced infringement.”

Commil v. Cisco, 720 F.3d 1361, 1367 (Fed. Cir. 2013).

“We now hold that evidence of an accused inducer’s good-faith belief of invalidity may negate the requisite intent for induced infringement.”

Id. at 1368.
The Supreme Court explicitly rejected a good-faith belief in patent invalidity as a defense to indirect infringement.

“The question the Court confronts today concerns whether a defendant’s belief regarding patent validity is a defense to a claim of induced infringement. **It is not.** The scienter element for induced infringement concerns infringement; that is a different issue than validity.”

*Commil*, 135 S.Ct. at 1928.

“When infringement is the issue, the validity of the patent is not the question to be confronted.”

Commil, 135 S.Ct. at 1928.

“Were this Court to interpret §271(b) as permitting a defense of belief in invalidity, it would conflate the issues of infringement and validity.”

Id.

“[A] patent is ‘presumed valid.’… But if belief in invalidity were a defense to induced infringement … a defendant could prevail if he proved he reasonably believed the patent was invalid. That would circumvent the high bar Congress is presumed to have chosen: the clear and convincing standard. Defendants must meet that standard to rebut the presumption of validity.”

Commil, 135 S.Ct. at 1929 (citations omitted).
"To say that an invalid patent cannot be infringed, or that someone cannot be induced to infringe an invalid patent, is in one sense a simple truth, both as a matter of logic and semantics."

Commil, 135 S.Ct. at 1929.

"Invalidity is an affirmative defense… [It] is not a defense to infringement, it is a defense to liability. And because of that fact, a belief as to invalidity cannot negate the scienter required for induced infringement."

Id.

"This dichotomy means that belief in invalidity is no defense to a claim of induced infringement."

Id. at 1931.
“I disagree, however, with the Court’s holding that good-faith belief in a patent’s invalidity is not a defense to induced infringement.

“…Only valid patents confer this right to exclusivity—invalid patents do not. It follows, as night the day, that only valid patents can be infringed. To talk of infringing an invalid patent is to talk nonsense.”

Commil, 135 S.Ct. at 1931 (internal citations omitted).
“[T]he Court says that ‘invalidity is not a defense to infringement, it is a defense to liability.’ That is an assertion, not an argument. Again, to infringe a patent is to invade the patentee’s right of exclusivity. An invalid patent confers no such right. How is it possible to interfere with rights that do not exist? The Court has no answer.”

Commil, 135 S.Ct. at 1932.
Pre- and Post-Commil Summary

**Pre: Commil v. Cisco (Fed. Cir.)**
Good-faith belief in non-infringement or invalidity can defeat inducement

**Post: Commil (U.S. Supreme Court)**
Belief That Patent Is Invalid Is *Not* A Defense

**Philips v. Zoll Medical (Fed. Cir.) (nonprecedential)**
A good-faith – but wrong – reading of non-infringement might be a defense

**Warsaw v. NuVasive (Fed. Cir.) (June 3, 2016)**
A patentee can prove “intent” by showing that the non-infringement belief was “unreasonable”
Post-Commil: Philips v. Zoll Medical (Fed. Cir.) (nonprecedential)

A good-faith – but wrong – reading of non-infringement might be a defense

“The Supreme Court has explained that if an accused infringer ‘reads the patent’s claims differently from the plaintiff,’ and if ‘that reading is reasonable,’ then the accused infringer should not be liable for indirect infringement.”

On appeal, the Federal Circuit stated:

“For the claims of the ’454 waveform patent and the ’905 waveform patent, we find that Zoll’s belief in non-infringement, based on its reasonable claim construction argument, does negate the knowledge requirement of contributory infringement.”

*Koninklijke Philips* at *15.*
“While we ultimately concluded that Zoll’s claim construction argument against the jury’s direct infringement verdict for the waveform claims was incorrect, … that argument was based on a reasonable interpretation of the claims in light of the specification and the prosecution history. Because this belief in non-infringement was reasonable, it is a sufficient basis on which to ground the jury’s implicit finding of insufficient knowledge for contributory infringement.”

*Koninklijke Philips* at *15.
The Federal Circuit rejected Zoll’s argument for the other patents

“Zoll’s non-infringement contentions amounted to nothing more than an allegation that Zoll’s customers, not Zoll, were using the Zoll defibrillator devices in a directly infringing way. This is not a defense to the knowledge requirement for contributory infringement because it evinces that Zoll knew it was potentially contributing to direct infringement of the ’374 self-test patent.”

Koninklijke Philips at *15.
“[W]e conclude that … MSD’s infringement position was *objectively unreasonable* and that the jury … could reasonably have concluded that MSD had knowledge (or was willfully blind to the fact) that it was infringing.”


Medtronic’s non-infringement position was “*objectively unreasonable*” because it was “clearly inconsistent with the construction … that MSD itself had propounded.”

*Id.* at 1349.
A patentee can prove “intent” by showing that the non-infringement belief was “unreasonable”

“To show the intent to induce infringement, it is sufficient that the plaintiff establish that a defendant’s asserted belief in non-infringement was unreasonable.”

Warsaw, 824 F.3d at 1351 n.2.
Despite a ruling in a defendant’s favor (e.g., summary judgment of non-infringement), a non-infringement position may still be unreasonable if that ruling is overturned on appeal:

“Even when a district court has sided with an accused infringer, if that holding is later altered on appeal it is possible that the overall record may allow a reasonable juror to find that an accused infringer acted without a good-faith belief of non-infringement.”

New Willfulness Standard

What is “Willful Infringement”?  
• (Hard to answer)

Why should I care?  
• (Easier to answer)
Why Should I Care About Willful Infringement?

Willfulness Can Lead To Enhanced Damages

“Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement….

“When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.”

35 U.S.C. §284
What is Willful Infringement?

Willful infringement requires:

- Knowledge of the asserted patent
- No “good-faith” basis to believe that your behavior (making, using, selling, etc.) does not infringe

What does that mean?

- Let’s start with “Seagate” – the standard before the Supreme Court’s *Halo* decision
Seagate’s Two-part Test (2007 – 2016)

Under Seagate, a patentee must meet objective and subjective prongs by clear and convincing evidence:

- **Objective**: “the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent,”

- **Subjective**: the risk of infringement “was either known or so obvious that it should have been known to the accused infringer.”

  *In re Seagate Technology LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007).
Seagate’s Objective prong is:

- “[W]ithout regard to ‘[t]he state of mind of the accused infringer.’”
- “[T]o be ‘determined by the record developed in the infringement proceedings.’”

Seagate’s Objective prong could be defeated by presenting a reasonable defense at trial – even if it failed.

Halo – New Willfulness Standard

The Supreme Court rejected the Seagate test:

- As inconsistent with § 284 because it is “unduly rigid, and ... impermissibly encumbers the statutory grant of discretion to district courts.”

- “[E]xcludes from discretionary punishment many of the most culpable offenders, such as the ‘wanton and malicious pirate’ who intentionally infringes another’s patent— with no doubts about its validity or any notion of a defense—for no purpose other than to steal the patentee's business.”

Halo, 136 S.Ct. at 1932 (citations omitted).
Halo – New Willfulness Standard (cont’d)

• **Halo** focuses on subjective willfulness (*Seagate’s* second prong):
  • “A patent infringer's subjective willfulness, whether intentional or knowing, may warrant enhanced damages, without regard to whether his infringement was objectively reckless.”

• **Under Halo, timing matters:**
  • “Culpability … is generally measured against the actor’s knowledge at the time of the challenged conduct.”

*Halo,* 136 S.Ct. at 1926.
Halo: Burdens of Proof & Review

• Burden of proof:
  • *Halo* rejected Seagate’s “clear and convincing” burden and lowered the burden to “preponderance of the evidence.”

• Appellate review:
  • Under *Halo*, a determination whether enhanced damages are appropriate is left “to the discretion of the district court” and “that decision is to be reviewed on appeal for abuse of discretion.”

  *Halo*, 136 S.Ct. at 1934.
Halo: Justice Breyer’s Concurrence

- **Enhanced damages:**
  - should not be awarded just because “the infringer knew about the patent and nothing more.”
  - only appropriate in “egregious cases,” such as deliberate or wanton conduct; “intentional or knowing” infringement.

- **Opinions of Counsel**
  - Can be expensive: “[O]pinion[s] [of counsel] could easily cost up to $100,000 per patent”; “such opinions cost ‘tens of thousands of dollars.’”

_Halo, 136 S.Ct. at 1934-36._
“Egregious” Misconduct


But Halo provided little guidance on what may constitute “egregious” misconduct:

“Halo itself offered little by way of a concrete standard to assume the mantle [of Seagate] … Indeed, Halo—somewhat confoundingly—ennobles courts ‘to punish the full range of culpable behavior,’ while also ‘limiting the award of enhanced damages to egregious cases of misconduct beyond typical infringement.’”

“Egregious” Misconduct

Courts may still looks to the Read factors in determining “egregious” misconduct.

“In light of Halo, which clearly stated that district courts are not bound by any rigid formula or set of factors, the Read factors are now one set of guidelines courts can use to evaluate alleged misconduct, but are no longer the sole set of criteria. This Court finds the Read factors present useful guideposts in determining the egregious[ness] of the defendant's conduct...”

Finjan, Inc. v. Blue Coat Sys., Inc., WL3880774, at *16 (N.D. Cal. July 18, 2016)
“Egregious” Misconduct

Read Factors (“Back to the Future”)

1. whether the infringer \textit{deliberately copied} the ideas or design of another;

2. whether the infringer, when he \textit{knew of the other's patent} protection, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed;

3. the infringer's \textit{behavior as a party to the litigation};

4. \textit{defendant's size and financial condition};

\textit{The Read Corp. v. Portec Inc.},
970 F.2d 816 (Fed. Cir. 1992)
“Egregious” Misconduct

*Read Factors* (con’t)

5. *closeness of the case*;
6. *duration of defendant's misconduct*;
7. *remedial action* by the defendant;
8. *defendant's motivation* for harm;
9. *attempt to conceal* misconduct.

*The Read Corp. v. Portec Inc.*, 970 F.2d 816 (Fed. Cir. 1992)
What might constitute “egregious” misconduct?

- **Court increases damages by 2.5 X.** Knowledge of a patent, evidence that lawyers had concerns about infringement of the patent, lack of reasonable invalidity defense, and failure to take remedial measures. (*Polara Eng'g, Inc. v. Campbell Co.*, 2017 WL 754609, at *16 (C.D. Cal. Feb. 27, 2017))

What might constitute “egregious” misconduct?

- **Doubled jury’s damages verdict of $24.85 million to $47.7 million.** Copying a patent, lack of good faith non-infringement defense, and concealing infringement. (*PPC Broadband, Inc. v. Corning Optical Commc'ns RF, LLC*, 2016 WL 6537977, at *9 (N.D.N.Y. Nov. 3, 2016))

- **Court trebled jury award to $4.2 million.** Copying a patent, failure to investigate the patent, and deplorable litigation misconduct. (*Innovention Toys, LLC v. MGA Entm’t, et al*, No. 07-6510 (Dkt. 761) (E.D. La. March 8, 2017))
Affirming enhanced damages by 50%, the Federal Circuit stated:

- “Knowledge of the patent alleged to willfully infringed continues to be a prerequisite to enhanced damages.”
- “But as the Supreme Court explained in Halo, timing does matter. Kohler cannot insulate itself from liability for enhanced damages by creating an (ultimately unsuccessful) invalidity defense for trial after engaging in the culpable conduct of copying, or ‘plundering,’ patented technology prior to litigation.”

Post-\textit{Halo} Decisions: \textit{WesternGeco. v. ION} (Fed.Cir.)

Post-\textit{Halo}, the Federal Circuit found Seagate’s subjective and objective prongs still relevant.

- “\textit{Halo} did not disturb the substantive standard for the second prong of \textit{Seagate}, \textit{subjective willfulness}.”

With respect to enhanced damages, the Federal Circuit stated:

- “After \textit{Halo}, the objective reasonableness of the accused infringer’s positions can still be relevant for the district court to consider when exercising its discretion.”

\textit{WesternGeco L.L.C. v. ION Geophysical Corp.}, 837 F.3d 1358, 1362-63 (Fed. Cir. 2016).
Post-\textit{Halo} Decisions: \textit{Innovention Toys v. MGA} (Fed. Cir.)

Jury found willfulness and District Court enhanced damages

Federal Circuit reversed willfulness and enhanced damages

- Obviousness defense “not objectively unreasonable”

\textit{Halo} vacates Fed. Cir. Decision
Post-*Halo* Decisions: *Innovention Toys v. MGA* (Fed. Cir.)

On remand, the Federal Circuit stated:

- “*Halo* does not require that we now affirm the district court’s award of enhanced damages and fees…. *Halo* warrants a … remand for reconsideration. Through its *emphasis on egregiousness* and otherwise, *Halo* clarifies the policies affecting whether to enhance damages. The district court should revisit its exercise of discretion to enhance the damages in this case in light of that clarification. The district court should also *reconsider its fee award*, which it viewed as related to its enhancement determination.”

Post-*Halo* Decisions: *Innovention Toys v. MGA* (Fed. Cir.)

The Federal Circuit continued:

- “The remand in this case, therefore, is for the district court to exercise its discretion in accordance with *Halo*, including the emphasis on *egregiousness*; willful misconduct has already been established by a verdict that *Halo* does not warrant disturbing.”

Post-*Halo* Decisions: *Dominion v. Alstom* (E.D. Penn)

The E.D. of Pennsylvania District Court **doubled** the damages after considering the jury's finding of willfulness and Alstom's egregious conduct under the *Read* factors:

1. Alstom had the means and opportunity to **copy** Dominion's patent after a trade show presentation;
2. Alstom was **on direct notice of Dominion's patents** from the second month that it started work on project with Duke;
3. Alstom **did not have good faith belief in non-infringement** because it was based entirely on opinions of non-experts;
4. Alstom did not take full remedial action after learning of possible infringement but **continued working with Duke**;
5. Alstom **motivated by a desire to gain a competitive advantage**; and
6. Alstom **tried to conceal misconduct** from Dominion.
Post-*Halo* Decisions: *Dominion v. Alstom* (E.D. Penn)

Litigation conduct (alone) will not prevent a finding of willfulness:

“Under *Halo*, we assess the infringer's state of mind ‘at the time of the challenged conduct’ ... not if they muster a reasonable (even though unsuccessful) defense at the infringement trial.”

But litigation conduct matters to enhanced damages. The District Court did not *treble* the damages because it:

“[did] not find Alston's conduct so egregious to warrant treble damages under § 284 because two Read factors, closeness of the case and behavior as a party to litigation, weigh in Alstom's favor. Additionally, there is only an inference of copying present.”

In granting Summary Judgment of no willfulness the Court stated:

“Dorman has not relied solely on invalidity defenses. Rather, Dorman has consistently asserted noninfringement…”

“Finally, the Court concludes that PACCAR may not base its willful infringement claims on Dorman's conduct after filing of this lawsuit because PACCAR has no evidence of pre-filing willful infringement and failed to seek a preliminary injunction… Dorman's conduct during the brief pre-filing period is insufficient to allow PACCAR's claims for willful infringement “in the main” to be based on pre-filing conduct.”

*Dorman Prods., Inc. v. PACCAR, Inc.*, 201 F. Supp. 3d 663, 681 (E.D. Pa. 2016)
What If No Pre-Filing Conduct Is At Issue?

Dorman Products has since been cited and quoted with approval:

“'Absent evidence of **pre-filing willful infringement**, a patentee who does not seek a preliminary injunction may not base a claim for willful infringement solely on the infringer's post-filing conduct.’”

Rule 12(b)(6) Dismissal Of Willfulness

The impact of *Halo* on the pleading standard for willful infringement is unclear.

“*Halo*'s effect on the pleading standard for willful infringement remains unclear … At a minimum, the discretion that *Halo* confers on district courts to award enhanced damages based on the nature of the specific misconduct in a given case counsels hesitation before dismissing allegations of willfulness at the pleading stage.”

At one end, courts may require “facts sufficient to support an inference ‘plausible on its face’ that the alleged conduct is of the egregious nature described in [Halo].”

Rule 12(b)(6) Dismissal Of Willfulness

Delaware District Court dismissed willfulness pleading because it did not articulate the required “egregious” conduct:

• “Plaintiff does little more than provide a formulaic recitation of the pre-Halo elements of a willful infringement claim.”

• “[T]he Complaint does not sufficiently articulate how the U.S. Defendants’ making, using or offering for sale of the Gamma Knife Icon actually amounted to an egregious case of infringement of the patent.”

Arizona and Nevada District Courts similarly dismissed willfulness allegations because no articulation of “egregious” misconduct:

- “Plaintiff has alleged sufficient facts to show knowledge, but not to show the additional element of egregiousness. [Defendant’s] motion to dismiss as to willfulness will be granted.”
  

- “Under Halo, Plaintiffs have failed to state a claim for willful infringement because they have failed to allege any facts suggesting that Defendant’s conduct is ‘egregious ... beyond typical infringement.’ Plaintiffs have simply made [] conclusory allegations....”

Rule 12(b)(6) Dismissal Of Willfulness

At the other end, a court may not require pleading “egregious” misconduct:

“At the pleading stage, it is not necessary to show that the case is egregious.”

Eastern District of New York denied motion to dismiss willfulness allegation even though no articulation of “egregious” misconduct:

“The complaint adequately alleges that the defendants committed acts of infringement with full knowledge of the plaintiff's rights in its patents. That is sufficient.”

Some courts read *Seagate* as imposing a per se rule that a plaintiff cannot maintain a claim of willful infringement based solely on post-suit conduct unless it sought a preliminary injunction. *Halo* calls into doubt any such rule.

“In light of *Halo*, *Seagate’s* rule against enhanced damages absent a motion for a preliminary injunction (or other unique circumstances) no longer applies.”

Recently the Federal Circuit held that a patentee does **not** need to seek a PI to assert willfulness:

“We also disagree with the district court's second decision—that Mentor could not assert willful infringement because it did not seek a preliminary injunction. As we noted in *Aqua Shield*, *there is ‘no rigid rule’ that a patentee must seek a preliminary injunction in order to seek enhanced damages.*”

Willful vs. Induced Infringement

“The scienter required for induced infringement is knowledge of the existence of the patent and knowledge ‘that the induced acts constitute patent infringement.’”


“The scienter required for willful infringement is different from that required for induced infringement.”

_Id._
Willful vs. Induced Infringement

Finding of induced infringement does not dictate a finding of willful infringement:

“The Supreme Court has explained that courts are to only award enhanced damages as a ‘punitive’ or ‘vindictive’ sanction. These damages are to be reserved for egregious cases, typified by ‘willful’ conduct indicating that the infringing party acted in bad faith. In short, a finding that an infringer has acted ‘willfully’ requires “more than simple awareness of the patent and awareness of infringement.

The Court does not need to assume that the [] Defendants necessarily acted in bad faith simply because the Court found that they induced a third party to infringe on Plaintiff’s patent.”

Knowledge of the patent is required

- When did you learn of the patent?
  - Before or after design / launch of your product?
- How did you learn about the patent?
  - Did patentee send a letter or other notice?
- Did you review competitor’s product?
  - Was the patent listed on the product?
- What is your relationship to patentee?
  - Competitors?
- Is copying involved?
What steps/actions did you take?

- Opinion of Counsel
  - Privileged – only discoverable with waiver
  - Must rely on the opinion
- In-house analysis of patent
  - Less upfront cost (than opinion)
  - Not privileged unless (U.S.) lawyers is involved -- discoverable in litigation
Indirect & Willful Infringement Analysis

What steps/actions did you take?

- Non-Infringement Position?
- Invalidity Position?
  - Will not negate intent for indirect infringement
- Consider a license
- Consider product redesign

What to include in your pleading:

- More than knowledge of the patent
- Egregious conduct
How to Defend

Expect courts to consider “timing” to be important as in *Halo*

Pre-suit knowledge of patent

- “Knowledge” element for intent can be “negated” by a good-faith belief in non-infringement
- Opinion of counsel should address claim construction and non-infringement
Thank You!
Panelist Biographies

- William J. McCabe, Partner, Perkins Coie
- Gene W. Lee, Partner, Perkins Coie
- Neal K. Feivelson, Vice President & Chief Intellectual Property Counsel, ADP
- James R. Myers, General Counsel, Tristar Products, Inc.
William McCabe is a patent litigator with over two decades of experience handling patent infringement and trade secret actions, licensing and re-examinations. Bill has represented sophisticated U.S., European and Asian companies in high-stakes patent litigation and counseling matters, from New York to Tokyo and Seoul, including one patent trial widely viewed as the biggest “defense” win in U.S. patent litigation history. Bill obtained a judgment of noninfringement, invalidity and unenforceability against a defendant that had already collected more than $1.5 billion from over 1,000 companies.

Bill’s experience spans a variety of industries, including telecommunications, optics, semiconductors, software, medical records, energy, chemical engineering and electrochromics. In the high-tech arena, he has handled significant, high-stakes litigation involving CDMA and Wi-Fi technologies, encrypted VoIP and optical switches used in wavelength-division multiplexing (WDM) for telecommunications networks.

Additional industry areas of his patent litigation experience include automotive mirror products, bar code and machine vision technology and arcade games. Bill earned his undergraduate degree in chemical engineering and began his career as a refinery startup engineer for UOP.

Recognized as one of the world’s leading patent litigators by IAM 250 and by New York Metro Super Lawyers, Bill is the author of a chapter in International Patent Litigation: Developing an Effective Strategy on U.S. patent litigation focused on federal courts and the ITC. In addition, Bill has spoken on the issue of patent prosecution and litigation misconduct.

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Gene W. Lee | Partner, Perkins Coie LLP
Full Bio Available at http://www.perkinscoie.com/GLee/

Gene Lee is an experienced lead counsel in patent litigations who is known for his thoughtful work and dedication to clients. He regularly works on inter partes reviews and other adversarial proceedings in the USPTO, and trade secret, copyright, trademark and unfair competition matters. He also advises clients on licensing, patent portfolio analysis, and the IP aspects of corporate transactions.

Gene’s work has covered a wide range of technologies, including computer systems and software, telecommunications and wireless communications, medical devices, videogames, audio processing, pharmaceuticals, financial services, chemistry, semiconductors and geoscience.

He has represented major U.S. and Asian companies in high-stakes disputes. Among Gene’s recent achievements are a stipulated judgment of noninfringement in the E.D. of Texas for a Korean electronics company (affirmed on appeal), and his successful representation through trial of the world’s largest alcoholic beverages company in the first investigation in the U.S. International Trade Commission’s pilot program for potential early disposition of cases.

Recognized by Chambers Global, IAM Patent 1000 and Managing IP for excellence, Gene regularly speaks, publishes and offers commentary on recent trends and important issues in patent law and IP litigation.

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Neal K. Feivelson, Vice President & Chief Intellectual Property Counsel, ADP

**Neal Feivelson** is Vice President and Chief Intellectual Property Counsel at ADP, a Fortune 250 provider of human capital management technology with annual revenue of more than $12 billion and annual R&D spending of more than $600 million. Neal’s responsibilities include managing, procuring, perfecting, licensing, and litigating ADP’s intellectual property globally. As a senior member of ADP’s Litigation Practice, Neal also manages non-IP litigation matters.

Neal has practiced IP law for over 20 years, including both in-house and at several international law firms, where he counseled large companies, start-ups, hedge funds, non-profits, and individual inventors. Two jury verdicts Neal helped procure for a client were among the 10 largest-ever damages awards in patent infringement cases at the time, resulting in the client collecting more than $1.3 billion.

Neal earned his B.S. degree from Columbia University, where he majored in electrical engineering, and his law degree from New York Law School, where he was Editor-in-Chief of the Journal of Human Rights. Neal is a member of the bars of the States of New York and New Jersey; the Federal Courts of the Southern and Eastern Districts of New York, the District of New Jersey, and the District of Colorado; the Court of Appeals for the Federal Circuit; and is admitted to practice before the U.S. Patent & Trademark Office. For seven years, Neal taught the electromechanical section of the Practising Law Institute’s Advanced Patent Prosecution Workshop: Claim Drafting and Amendment Writing. Neal authored PLI's Advanced Amendment Practice in the Electromechanical Arts and coauthored PLI's Maximizing Patent Value by Effective Prosecution. In addition to frequently writing and speaking about IP law, Neal is active in several professional associations, including the Hon. Wm. C. Conner Inn of Court, and is a founding member of the Conference Board's Chief IP Attorneys Council.
Providing legal advice to a company that he has represented for twenty five (25) years including managing litigation (primarily multi-million dollar patent litigation & products liability), intellectual property protection, advertising, government regulation, corporate structuring, shareholder relations, stock purchase, tax, employment, and licensing negotiations.

Tristar Products, Inc., is a recognized pioneer for taking innovative ideas and creating home appliances, fitness equipment, sports gear and health and beauty programs. With proven international and domestic distribution channels, media power in over 100 countries and quality manufacturing that attracts celebrity endorsements, Tristar Products Inc. has exceeded over a billion dollars in sales. Tristar Products, Inc. is an Inc. 5000 company.